Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ____

In The
Supreme Court of the United States
October Term, 2000

KEITH ROBERTSON, CHRISTINE ROBERTSON &
KEVIN ROBERTSON

Petitioners, Pro Se

v.

WILLIAM DONALD SCHAEFER
OF THE
COMPTROLLER OF TREASURY

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Keith Robertson
Chrisitne M. Robertson
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38 pp

QUESTIONS PRESENTED FOR REVIEW

As to Keith ,Christine & Kevin Robertson-

Can the U.S. Court of Appeals for the 4th Circuit denied our petition based on the first decision made by the U.S. District Court and not the second decision on which our appeal was filed.

As to Kevin Robertson-

Does the U.S. Court of Appeals 4th Circuit have a right to use the phrase, Inter Alia,Sovereign Immunity, allowing William Donald Schaefer to proceed *in rem* against Kevin Robertson.

As to Both-

By judgeing the Petiton for Permission to Appeal on judge Benson E Leggs decision and not on the final decision made by J.F. Motz did the U.S. Court of Appeals violate the petitioners 5th&14th amendment rights of the United States Constitution.

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PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari be issued to review the decision ofthe U.S.Court ofAppeals of 4thCircuit entered in this con solidated case (a) to decide an important issue of due process of law that has not been,but should be,decided by the Supreme Court of the United States and (b) to exercise this Court's power to over turn the U.S. Court of Appeals for the 4th Circuit decision.

OPINIONS BELOW

The opinion of the U.S.Court of Appeals of 4thCircuit that gives rise to this Petition was entered on June 16,2000 and is unpublished. It is printed at A10- A11. The opinions of the U.S.District Court for the District of Maryland is on microflim October 27, 1999. There opinions are printed at A15-A21. By order date August 7,2000, the Fourth Circuit Court of Appeals denied aPetition for Rehearing.A12

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257,n 87. The jurisdiction of the United States Court of Appeals 4th Circuit was invoked pursuant to 28 U.S.C.1292 (b). The jurisdiction of the United States District Court of Maryland was invoked pursuant to 28 U.S.C. 1331 & 28U.S.C.A. 2283n21.

STATUTORY PROVISIONS AND RULES

Maryland Tax General Section 3-103

STATEMENT OF THE CASE

In 1913 the 16th Amendment of the United States Constitution gave only congress the power to lay and collect taxes. The United States Constitution never gave the 50 states that power so each of the 50 states had to amend there state constitutions to be able to collect state income tax on the Citizens of there states.

On Nov 8,1938 , in the Maryland Manual page 328. The General Assembly tried to amend article 15 of the Maryland Constitution to enact a State income tax. This amendment was voted down by the Citizens of Maryland (A1-2).The Maryland Declaration of Rights of the Maryland Constitution article 1 (A3) & the United States Supreme Court case (*M'Culloch v. The State of Maryland* et al 1819) (A4) supports the Citizens of Maryland right to reject that amendment.To this day article 15 of the Declaration of Rights of the Maryland Constitution remain unchange.(A3)

After learning this information, we the plaintiffs withdrew from the Maryland state income tax program. In May, 1997 we the plaintiffs file a 502x claim form for our 1994,95&96 tax refund. in the sum of $6,587 for Keith & Christine Robertson & $4,656 for Kevin Robertson with a interest of 1.08% not yet calculated pursuant to Title 26 I.R.C. section 6602. The Comptroller of Treasury for the state of Maryland derives its power to tax from the Maryland Tax General who gets its definition from the Internal Revenue Code (Maryland Tax General section 10-101(1)) so all of Title 26 I.R.C. do apply to the state of Maryland.

On or about August, 1997 the Comptroller of Treasury turn our claims over to the Maryland Tax Court were they rejected our claim stating that we are income tax payers.This is not correct, according to the Maryland Manual 1938,Article 15 of the Maryland Constitution & the United States Supreme Court case *Lucas v.Earl* 281 U.S. 111,113. Although we the plaintiffs attend one of the Maryland Tax Court hearing we discovered that the Maryland Tax General section 3-103 (A5) clearly states that the Maryland Tax Court has Jurisdiction over property tax assessment only. No where in the Maryland Tax General or the Maryland Constitution does it give the

Maryland Tax Court judical power to proceed over court cases dealing with its' Citizens or income tax. The Maryland Tax Court has no judicial power and is not recognised by the Maryland Constitution as one of its' enumerated judical courts.(*Shell Oil Co. v. Supervisor of Assmts* .,276 Md. 44, 343 A. 2d 521(1975) (A6) & Art.IV,section 1 of the Maryland Constitution.)(A7)

On February 22, 1999 a writ of Certiorari was sent to the Court of Appeals for Maryland after the Circuit Court for Baltimore City on February 3,1999 denied the Petitioner a trial,base on the September 29 ,1998 decision from the District Court for Baltimore City that we the plaintiffs did not Exhaust Our Administrative remedies in the Maryland Tax Court.

On May 14,1999.The Court of Appealsfor Maryland issue an order denying the plaintiffs Writ of Certiorari. The Court of Appeals for Maryland reason for denying the plaintiffs certiorari was that it was not "in the desirable and in the public interest". This phrase has been deemed unlawful by the United States Supreme Court cases (*Washington Market Co. v. Hoffman,* 101 U.S. 112,115:) & (*U.S. v. Missouri Pac R.Co.*,278 U.S.269)..

On or about September 27, 1999, defendant William Donald Schaefer Comptroller of Treasury for Maryland placed a lien against Kevin Robertson for 25% of his compensation for labor with out a court order signed by a judge appointed to one of the courts enumerated by the Maryland Constitution. This was carried out by Barbara Fogle supervisor of pay roll for Hughes Network Systems on October 7,1999.(A8-9)

A Petition was sent to the United States Supreme Court (99-306), The petitioners Writ of Certiorari was denied on October 4,1999.We then filed a petition in the United States District Court for Maryland where Judge Benson E Legg denied our Civil Action suit and Temporary Restraining order against, William Donald Scheafer of the Comptoller of Treasury, by useing the phrase sua sponte.We the petitioners were not aware at the time, that we had to name the official acting outside of there official duties. We then filed a Motion For Reconsideration naming the official, whose name is William Donald Scheafer. Chief Judge J.F. Motz denied the

petitioners motion based on section 10-101 thru104 of the Maryland Tax General, that William Donald Scheafer has the right to impose a state income tax on the Citizens of Maryland

A Petition for Permission to Appeal was sent to the United States Court of Appeals for the 4thCircuit where it was denied,based on the phrase"inter alia, sovereign immunity".The Court of Appeals for the 4th Circuit denied our appeal based on the first decision made by Judge Benson E Legg and not the second decision made by Chief Judge J.F. Motz on which our appeal was originally filed, therefore the petitioners appealed the decision of Chief Judge J.F.Motz who's decision isthe final opinion of the District Court and not the decision of Judge Benson E. Legg. A Petition for Rehearing was sent to the 4th Circuit explaining this over sight by the Court. The United States Court of Appeals for the 4th Circuit denied the Petition For Rehearing ,no explaination was given.(A10-12)

REASONS FOR GRANTING THE WRIT

I. AN IMPORTANT QUESTION OF THE PHASE INTER ALIA,SOVEREIGH IMMUINTY, ENTERED BY THE COURT OF APPEALS FOR THE FOURTH CIRCUIT ON BEHALF OF WILLIAM DONALD SCHAEFER OF THE COMPTROLLER OF TRESURY FOR MARYLAND HAS NOT BEEN, BUT SHOULD BE,DECIDED BY THIS COURT.

The United State Court of Appeals for the Fourth Circuit decision to grant William Donald Scheafer sovereign immunity under the Eleventh Amendment , does not apply to cases where the decision violates a citizens 14th Amendment Consitutional Rights. In the case of *Exparte Young,*209 U.S. 123(1908),which permitted suit against state officials to obtain prospective relief against violations of the 14 Amendment. This is evident by the action taken by William Donald Schaefer, when he place a wage lien against Kevin Robertson for $1,500 dollars (proceeding *in rem*) on or about September 27,1999 (A8),With out a court order signed by a judge appointed to one of the courts enumerated by the Maryland Constitution.(A13).This was carried out by Barbara Fogle Supervisor of payroll for Hughes Network Systems on October 7,1999 (A9). Section 5 of the 14th Amendment allows congress to abrogate immunity pursuant to its enforcement powers under this Amendment....emphasis added. *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). Even if the Eleventh Amendment does cover a citizen's suit against his own State, it does not bar action against state officers enforcing an invaild statute,*Exparte Young*, 209 U.S. 123, 159-160. Article 24 & 44 (A14)of the Declaration of Rights ofthe Maryland Constitution and the Maryland Tort Claims Act section 12-101(a)1-14b waive sovereign immunity of it State and Government Official, allowing Citizens to sue them in court if they commit a tortious act.Both State & Federal laws show that the petitioners Keith,Christine and Kevin Robertson are well within there Constitutional Rights to file suit against a State Official (William Donald Schaefer)who is enforcing invaild statute's and for violating Kevin Robertson 14 Amendment Rights.

II. THE DECISION OF THE CIRCUIT COURT IS NOT CONSISTENT WITH THE DECISION MADE BY CHIEF JUDGE J.F. MOTZ OF THE DISTRICT COURT ON WHICH OUR APPEAL WAS ORGINALLY FILED.

The U.S. District Court of Appeals for the 4th Circuit denied our appeal based on the first decision made by Judge Benson Everett Legg and not the second decision made by Chief Judge J.F. Motz.

On October 26,1999,(A15-18) Judge Benson Everett Legg denied the petitioners Civil Action suit and Temporary Restraining order against, William Donald Scheafer of the Comptoller of Treasury, by useing the phrase *sua sponte*.We the petitioners were not aware at the time, that we had to name the official acting outside the scope of their official duties. We then filed a Motion for Reconsideration naming the official, whose name is William Donald Scheafer.

On December 28,1999,Chief Judge J.F.Motz denied the petitioners motion based on section 10-101 thru 104 of the Maryland Tax General (A19-21), that William Donald Scheafer has the right to impose a state income tax on the Citizens of Maryland.This was the final decision made by the District Court of Maryland, not Judge Benson E.Legg.

Judge J.F. Motz states that the Maryland Tax General section 10-104 can impose a Maryland taxable income of each individual and of each corporation. He also implies that the Maryland Tax General section 10-101(e), 10-101(f)(1) and title 26 U.S.C. section 1 uses the term Individual as opposed to Citizen.

Article 1 of the Maryland Declaration of Rights says that the people have the inalienable rights to alter and reform or abolish their form of Government as we deem expedient.

In the Maryland Manual Nov 8,1938 The General Assembly asked the Citizens of Maryland for permission to amend article 15 of the Maryland Constitution to enact a State income tax.This amendment was voted down by the Citizens of Maryland. The Maryland

Declaration of Rights article1 & the United States Supreme Court case *M'Culloch v. The State of Maryland* et al 4 Wheat 316,404, 405, 406 and *Bourbon v. Governor of Maryland.*,258.Md. 252, 265 A.2d 477 1970 which states:
" The general power of the State legislature to make,alter and repeal laws, pursuant to the Constitution by which the people created the legislature, does not include the power or the right to make or remake the fundamental law,the Constitution." These cases supports the Citizens of Maryland right to reject that amendment. To this day Article 15 Declaration of Rights of the Maryland Constitution remain unchanged.(A3.)

The United States Supreme Court held that: In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the government and in favor of the Citizens. *Gould v. Gould* 245 U.S. 151.

Judge J.F.Motz also states that the term Citizens is absent from Titile 26 U.S.C., this is why the Maryland Tax General section 10-101(e)& (f) (1) uses the term individual as opposed to Citizen.(A20) This is not true. Title 26 U.S.C. section 3121(e) 1-2 clearly defines State, United States and Citizens as follows:

(1) State.-The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States.-The term "United States. when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Island,Guam,and American Samoa."

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposed of this section, as a citizen of the United States.

Judge J.F. Motz believes that the Maryland General Assembly exercised its discretion to adopt the federal adjusted gross income

as the guide for calculating state tax and that the Maryland income tax does not depend on the Title 26 U.S.C.(A21). The Maryland Tax General section 10-101(c-1),(1)entitled"Definitions":" (c-1) Federal adjusted gross income.-"Federal adjusted gross income" means (1) for an individual other than a fiduciary, the individual's adjusted gross income as determined under the Internal Revenue Code";

In the *Hoffman v. Connecticuit Income Maint.Dept.*, 492 U.S. 96 (1989) states that, any Code provision containing one of the trigger words in this case-"Federal,""Definitions," & "I.R.S."-applies to the States,and that"a determination by the court of an issue arising under such a provision binds[the States]"(emphasis added).

It is quite clear from the statue sighted above that the Maryland Tax General section 10-101[c-1,1]) is not a guide, but (as entitled) the State of Maryland's definition of income (based on the Internal Revenue Code); which is no definition at all, as is stated in the case of *US v. Ballard* 535 Fed.2d.400,404 the courts said, " The general term "income" is not defined in the Internal Revenue Code." and in the case of *Conner v.US* 303F.Supp.1187,1188, 1189,1190 & 1191. "No attempt has ever been made by Congress to define with specificity the term"income" as it is used in the 16th Amendment.... The judiciary accepted this responsibility and in *Eisner v.Macomber* 252 US 189,205,206,207"The Supreme Court referring to two cases arising under the Corporation Excise Tax Act of 1909 endorsed the following definition of income: Income may be defined as the gain derived from capital,from labor or from both combined, provided it be understood to include profit gain through a sale or conversion of capital of capital assets... The Government, although baseing its argument upon the word "gain", which was extended to include a variety of meanings; while significance of the next three words was overlooked or misconceived. "Dervied"-from-capital"," the gain-derived from-capital",etc. Here we have the essential matter: not a gain accruing to capital; not a growth or increment of value in the investment; but a gain, a profit,something of exchangeable value proceeding property, severed from the capital however invested or employed,and coming in, being"derived",that is; received or drawn by the recipient (taxpayer)for his separate use,benefit and disposal;-that is income derived from property.

The state of Maryland dose not have the authority to give itself the power to tax the income of Sovereign Citizens, unless the permission is explicitly granted by: (1) The Maryland Constitution in Article 15 of the Declaration of Rights or (2) the Maryland Constitution is amended by its Citizens, which as of this time has not been done. And since the Maryland Legislature derives its power and authority to tax income from the sovereign Citzens, it is only the latter who can grant such authority, which has been done.

The State Legislature must pass all laws in accordance with and in pursuance of:(1) The United States Constitution(Article 1 & 2 of the Declaration of Rights of the Maryland Constitution; All (50) fifty states of the union have a republican form of government. Sovereignty, the power to tax, as well as, all other power belong; exclusively, to the Citizens,even though they have elected legislators to execute these powers- The power remains with the Citizens,who elected them.(A.) Maryland court case *Bourbon v.Governor of Maryland.*,258.Md.252,265 A.2d 477(1970) also states this aswell." In acting under a provision in a state constitution like this section, the legislature does not exercise its ordinary legislative power or any sovereignty of the people that has been entrusted to it, but acts under a limited power which the people have conferred upon it and which with equal propriety and appropriateness might have been conferred upon either house, the Governor, a special commission or other body or tribunal. In proposing amendment of the Constitution the legislature does not have the plenary powers it has in enacting laws but only the powers specifically delegated to it."

CONCLUSION

Texas,Delaware,Alaska,Tennessee and New Hampshire are just five of the nine state who dose not have a state income tax. These States has upheld there state constitution, and as early as 10/99 New Hampshire state Supreme Court ruled against a unconstitutional, propose state income tax that gives an unfair break for richer communities (Baltimore Sun 10/16/99 Pg,9-A). 26 C.F.R. & 1.861-8(a)(4) states plainly that one must have income from a "source" listed in sub section(f)(1)(A22-23).Both the Tucker Act,28 U.S.C.A.

section1346 (a)(2)1491 and Tort Immunity Act 28,U.S.C.A.section 1346(b),2674 allows for citizens to sue in federal court for funds that where erroneously collected. Title 26(CFR)sec.601.602(a) Says: "The Tax system is based on voluntary compliances" and *Dodd v. U.S.* 223 F.Supp.785,787also states:"The construction of the Internal Revenue Law is not to be determined by local laws,but is a Federal Question.....For Federal Tax purposes, the Federal Regulations govern."

WHEREFORE, Petitioners respectfully pray that this Court will issue a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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Christine M. Robertson
Kevin Robertson
Pro,Se
2869 Forest Glen Rd
Baltimore, Maryland 21216
(410) 448-2879

APP. 1

MARYLAND MANUAL
(1938 PAGE 328)

CONSTITUTIONAL AMENDMENT
(Chapter 525 - 1937)

Amendment to Article XV of the Declaration of Rights of the State Constitution authorizing the General Assembly to enact a State income tax, which may be classified, graduated and progressive and which may provide exemption of a reasonable amount of income from taxation.

Counties and Baltimore City	*For Constitutional Amendment*	*Against Constitutional Amendment*
Allegany	4,054	5,083
Anne Arundel	3,454	3,824
Baltimore	17,597	17,877
Calvert	514	372
Caroline	944	978
Carroll	2,246	2,419
Cecil	1,881	2,639
Charles	421	299
Dorchester	711	1,122
Frederick	3,045	4,144
Garrett	600	1,610
Harford	2,441	1,854
Howard	1,892	1,040
Kent	810	1.252
Montgomery	5,891	4,905
Prince George's	4,968	3,894
Queen Anne.s	830	653
St. Mary's	427	312
Somerset	449	574
Talbot	888	1,098
Washington	2,888	5,115
Wicomico	989	1,487
Worcester	529	924
Baltimore City	31,093	35,839

1-6 legislative Dist. Totals_____	79,562	99,314

APP. 3

CONSTITUTION OF MARYLAND
DECLARATION OF RIGHTS

Article 1. Origin of government; right to alter.

That all Government of right originiates from the People, is founded in compact only, and instituted solely for the good of the whole;and they have,at all times ,the inalienable right to alter,reform or abolish their From of Government in such manner as they deem expendient.

Article 2. Constitution, laws and treaties of United States to be supreme law of State.

The Constitution of the United States,and the Laws made,or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States,are,and shall be the Supreme Law of the State;and the Judges of this State,and all the People of this State,are,and shall be bound thereby;anything in the Constitution or Law of this State to the contrary notwithstanding.

Article 15. Poll taxes prohibited; paupers not to be assessed; uniformity of taxation.

That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification of land, improvements on land personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government,and by the Counties and by the City of Baltimore for their respective purpose,shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may properly and justly be imposed, or laid with a political view for the good government and benefit of the community. (1890, ch. 242, rejected Nov. 8, 1938;1960,ch. 64 ,ratified Nov. 8,1960.)

It would be difficult to sustain this proposition. The Convention which framed the constitution was indeed elected by the State legislatures. But the instrument, when it came from there hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might "be submitted to a Convention of Delegates,chosen in each State by the people thereof,under the recommendation of its legislature, for their assent and ratification." This mode of proceeding was adopted;and by the Convention,by Congress,and by the State legislatures,the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely,on such a subject,by assembling in Convention...

APP. 5

Maryland Tax-General

Title 3.

Maryland Tax Court.

Section 3-103. Jurisdiction.

(a) In general.- The Tax Court has jurisdiction to hear appeals from the final decision,final determination,or final order of a property tax assessment appeal board or any other unit of the State government or of a political subdivision of the State that is authorized to make the final decision or determination or issue the final order about any tax issue...

The above-discussed principles are not disputed by Shell in this case .Shell's position, however, is that the Maryland Tax Court exercises a judical or "adjudicative"function,that it"has none of the executive or quasi-legislative functions imposed upon the State administrative bodies," and that the "proceedings of the Tax Court are,in all essential respects,equivalent to those of a court of law." Shell argues, relying upon *Pope v. United States*, 323 U.S. 1,65 S. Ct 16,89 L.Ed. 3 (1944), That the constitutional "status" of the Maryland Tax Court should be not be controlling.Instead, Shell's argument continues, we have jurisdiction to review Tax Court cases "because of the judical' character of the decision appealed from."

There are many respects in which the Maryland Tax Court lacks the characteristics normally associated with an entity exercising judicial authority. However, regardless of this, the Tax Court cannot be deemed to exercise initial judicial authorty for a more fundamentalreason.Under the Maryland ConstitutionUnlike the Federal Constitution, the judicial function may be exercised only by those courts enumerated in the Constitution.with the exception of the express authorization to create intermedate courts of appeal, the General Assembly of Maryland, unlike the Congress, is not empowered to create additional"courts"to exercise judicial power.

That judicial power of the State of Maryland is vested only in those courts enumerated by the Maryland Constitution is made clear by Art.IV, section 1:

APP. 7

CONSTITUTION OF MARYLAND

ARTICLE IV.

JUDICIARY DEPARTMENT

Part I-General Provisions.

SECTION 1. The Judicial power of this State is vested in a Court of Appeals,such intermediate courts of appeal as the General Assembly may create by law,Circuit Courts,Orphans'Courts, and a District Court. These Courts shall be Courts of Records,and each shall have a seal to be used in the authentication of all process issuing from it.

APP. 8

State of Maryland Comptroller Treasury

August 11,1999

KEVIN ROBERTSON
3915 LIBERTY HEIGHTS AVE APT
A1
BALTIMORE,MD 21207-7536

SSN.....***-**-****
Case No...000995377
Balance Due ..$1,500

SALARY GARNISHMENT WARNING

We have previously contacted you several times regarding your unsatisfied Maryland income tax liability. Please be advise that we have requested verification of employment from your employer listed in our records.

Pursuant to section 13-811 of the Tax General Article of the Annotated Code of Maryland,we can collect taxes you owe by attaching your salary. This means:

By statue,your employer can be required to deduct from your paycheck and pay to the Comptroller all money of $50 plus $15 per exemption per week,until your liability is satisfied.

If you do not make arrangements within 10 days of the date of this letter to satisfy your liability,a lien may be placed with your employer. Do not disregard this notice. You will not receive additional warnings. To make arrangements to pay your obligation or to ask further questions,please contact the cillection unit of the Compliance Division at 410-974-2432 or 1(888)674-0016. Correspondence should be addressed to the Collection Unit at 110 Carroll Street,Annapolis,MD 21411.

APP. 9

12801 :Kevin Robertson ***-**-**** 09/18/1999 - 10/01/1999

Pay Date- 10/07/1999 PTO -13.48

Earnings	Hours	Current	Y-T-D
Regular :Hours	80.00	1,053.60	17,960.77
Overtime: Hours			492.95
Overtime: Premi			231.56
Lead Premium,		63.20	1,115.53
Paid Time off			2,202.89
Holiday			830.48
Credit Allowan		4.81	96.20
Unpaid Time of			
Total	80.00	1,121.51	22.903.38

Deduictions	Current	Y-T-D
Garnish:State	255.05	1,500.-12/99
Dental Deducti	1.31	26.
Medical Deduct	15.35	307.
AD&D	.23	4.
STD	1.57	30.
LTD	2.32	45.
Direct Dep 1		244.
Total	273.83	2,394.

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

KEITH ROBERTSON,
Plaintiff-Appellant,

No.00-1074

v.

COMPTROLLER OF TREASURY
FOR MARYLAND,
Defendent-Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Benson E. Legg, District Judge. (CA-99-3078-L)

Submitted: April 13,2000

Decided: June 16,2000

Before WIDENER AND WILKINS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Keith Robertson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c) .

PER CURIAM:

Keith Robertson appeals the district court's order denying his motion for a temporary restraining order and dismissing his com-

plaint based on, inter alia, sovereign immunity. * We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Robertson v. Comptroller of the Treasury for Maryland, No. Ca-99-3078-l (D. Md. Dec. 28, 1999). Futher, we deny Robertson's motion for a preliminary restraining order and a temporary and permanent injunction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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* Kevin Robertson and Christine Robertson were Also parties in the district court, but they did not sign the notice of appeal. See Covington v. Allsbrook, 636 F.2d 63, 64 (4th Cir. 1980).

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 7, 2000

No. 00-1074
CA-99-3078-L

KEITH ROBERTSON

Plaintiffs - Appellant

v.

COMPTROLLER OF TREASURY FOR MAYLAND

Defendent - Appellee

ORDER

The appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,

/s/ Patricia S. Connor
CLERK

"In this State, all Judicial authorty is only such as is provided for by Article 4 of the Maryland Constitution, and it has been decided that only judicial functions can be exercised which find thier authority in that Article..., and that no court not coming within its provisions can be established in this State. This forbids any power in Legislature to clothe administrative boards with any judicial authority. there may be states in which it can be done,but Maryland is not one of them"...

CONSTITUTION OF MARYLAND
DECLARATION OF RIGHTS

Art.24 That no man ought to be taken or imprisoned or disseized of his freedhold, liberties or privileges, or out lawed, or exiled, or in any manner,destroyed, or deprived of his life, liberty or property,but by the judgment of his peers, or by the law of the land.

Art.44 That the provision of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of neccessity, or any other plea, is subversive of good Government,and tends to anarchy and despotism.

APP. 15

Keith,Christine & Kevin Robertson., Plaintiffs,

v.

Comptroller of Treasury for Maryland, Defendant.

Civ. A. No. L-99-3078.
United States District Court,
D. Maryland.

Oct. 26, 1999

Plaintiffs, residents of Baltimore, Maryland, filed this *pro se* civil action.

MEMORANDUM

BENSON E. LEGG, District Judge.

Plaintiffs, residents of Baltimore, Maryland, filed this *pro se* civil action on October 12,1999, asserting that the Sixteenth Amendment to the U.S. Constitution grants only Congress the power to levy and collect taxes. They further assert that for each of the 50 states to be able to collect state income tax, each state was required to amend thier state constitution. Plaintiffs contend however, that in 1938, Maryland tried to amend Article 15 of its constitution to enact a state income tax but the amendment was voted down and Article 15 to this day remains unchange. Believing they were therefore exempt from paying state income taxes, plaintiffs "withderw for this unconstitutional and unlawful act." In August 1997,defendent turned plaintiffs' claim over to the Maryland Tax Court,however,plaintiffs assert that the Maryland Tax Court has no judicial power to proceed over court cases dealing with its citizens' income tax. Plaintiffs continued thier legal proceedings and ultimately filed a petition with the Supreme Court which was denied October 4,1999. They file this complaint seeking"return of all monies stated inthe above complaint, including any interest, filing fees or fines.

Plaintiffs have also filed a motion for temporary restraining

seeking to enjoin defendant's conduct in placing a garnishment against the wages of Keith and Kevin Robertson for their failure to satisfy Maryland income tax liability. Plaintiffs contend that such action deprived them of property without due process.

Plantiff's have paid the $150.00 civil filing fee. However,it is well established that this Court has broad,inherent power *sua sponte* to dismiss an action, or part of an action, which is frivolous, sham, vexatious, or brought in bad faith. 1 Moore,s Federal Practice(2d-ed.) 0.60[6] at 639-40; *Crowley Cutlery Co. v. United States*,849 F. 2d 273,277 (7th Cir. 1988) (federal district judge has authority to dismiss a frivolous suit or his own initiative; *Brown v. District Unemploment Compensation Board*,411 F. Supp. 1001(D.C. 1975) (district court inherent power to control the judicial process and frivolous or harassing action sua sponte). This broad, inherent power, not limited or impaired by Rule 12(b),"may be invoke at any time during the process of this action." 1 Moore's, *supra*,at 640.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity,commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. " It is well-established that this bar to suits against states in federal courts applies not only to actions brought by citizens of another state, but also to those brought by citizens of the state involved. See *Hans v. Louisiana,* 134 U.S. 1 (1890). Plaintiffs' complaint against the State and its power to collect taxes. The Eleventh of sovereignty not to be amenable to suit of an individual without its consent." *Seminole Tribe of Florida v. Florida*,517 U.S. 44,54,116 S.Ct.1114,1122 (1996) (internal quotations and citations omitted). Accordingly, the Supreme Court has long held that"[t]his express constitutonal limitation denies to the federal courts authority to entertain a suit brought by private parties against a state without its consent."*Ford Motor Co.v.Depart ment of Treasury of Indiana, 323 U.S. 459,464* (1945).

To the extent plaintiffs' complaint may be construed as being filed under the provision of 42 U.S.C. section 1983,in addition to the Eleventh Amendment hurdle,this Court lacks jurisdiction over such a suit because the Comptroller of the Treasury of Maryland,

considered an agent of the State of Maryland,is not a proper"person" whom a section 1983 action may be brought. See *Will v. Michigan* Dept. of State Police,491 U.S. 58,62-71 (1989) (holding that neither a State nor a state official acting in an official capacity is a "person" within the meaning of section 1983); *Alabama v. Pugh*, 438 U.S> 781 (1978). Finally, Plaintiffs' section 1983 claim is barred by the *Rooker-Feldman doctrine. Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *district of Columbia Court of Appeals v.Feldman,460 U.S.* 462 (1983). "At its core, the doctrine is a recognition of the principle that the inferior federal courts generally do not have the power to exercise appellate review over state court decisions." *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506,509 (7th Cir. 1996), cert. denied,117 S.Ct. 1569 (1997). "As a result,litigants who feel a state proceeding has violated their constitutional rights must appeal that decision through thier state courts and thence to the Supreme Court. " *Young v. Murphy*, 90 F.3d 1225,1230 (7th Cir. 1996). indeed, it"is settled that 'a plaintiff may not seek reversal of a state court judgement simply by casting his complaint in the from of a civil rights action.'"*Ritter v. Ross*,992 F.2d 750.754 (7th Cir.1993) (citation omitted),cert.denied,510 U.S. 1046 (1994).

In light of the forgoing, the instant complaint shall be dismissed and the motion for temporary restraining order shall be denied.

A separate Order follows.

10/26/99
Date

Benson Legg
BENSON EVERETT LEGG
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEITH,CHRISTINE & KEVIN ROBERTSON

Plaintiffs,

v. CIVIL ACTION NO.L-99-3078

COMPTROLLER OF TREASURY FOR
MAYLAND

Defendent.

ORDER

In accordance with the foregoing Memorandum, IT IS this 26thday of October, 1999,by the United States District Court for the District of Maryland hereby ORDERED:

1. That the instant civil action **IS DISMISSED** and the Motion for Temporary Restraining Order **IS DENIED;**

2. That the Clerk of Court **CLOSE** this case;and

3. That the Clerk of the Court **Mail** acopy of this Order,together with the foregoing Memorandum, to **plaintiffs.**

Benson Legg
BENSON EVERETT LEGG
UNITED STATES DISTRICT JUDGE

Keith,Christine & Kevin Robertson., Plaintiffs,

v.

Comptroller of Treasury for Maryland, Defendant.

Civ. A. No. L-99-3078.
United States District Court,
D. Maryland.

Dec. 28, 1999

ORDER

J.F. Motz, Chief District Judge.

On November 8, 1999, plaintiffs filed a Motion for Reconsideration of the undersigned's October 27,1999,Order dismissing the above-captioned action. (Paper No.5) They contend that they wish to proceed in filing their action against William Donald Schaefer, the Comptroller of the Treasury of the State of Maryland for acting outside the scope of his official duties. They seek to enjoin him from assessing and collecting Maryland personal income taxes against them.According to plaintiffs,the Sixteenth Amendment to the United States Constitution gives only Congress the power to levy and collect taxes ,not the fifty individual states. They argue that because an amendment to the Maryland Constitution which would have enacted a state income tax was voted down in 1938,they are not subject to paying state income tax.

Plaintiffs' Motion has been read, considered, and shall be denied. The statutory authority under which Maryland imposes its income tax is not,by its terms, limited to only citizens of the state. Md. Ann. code section 10-102 of the Tax-General Article provides:

Imposition of tax:

Except as provided in section 10-104 of this subtitle,a tax is imposed on the Maryland taxable income of each individual and

of each corporation.

The definitions for an individual and Maryland taxable income are provided in section 10-101(e) and 10-101 (f)(1), respectively. "'Individual' means, unless expressly provided otherwise,a natural person or a fiduciary.""Maryland taxable income'means...for an individual, Maryland adjusted gross income,less the exemptions and deductions allowed under this title..."Conspicuously absent from these provisions,as well as in any other relevant section in the Tax-General Article,is the term"citizen." The Internal Revenue Code also uses the term"individual"as opposed to"citizen"in describing those subject to tax. 26 U.S.C. section 1. Taxation does not depend upon citizenship. *Scott v. Comptroller of Treas.*,105 Md. App.215,659 A.2d 341(1995).

In *Wood v. Tawes*, 181 Md.155,165,28 A.2d 850 (1942), cert. denied 318 U.S. 788 (1943), the Maryland Court of Appeals explained that "the tax...is founded upon the protection affored by the state to the recipient of the income in his person,in his right to received. " (quoting *People v. state of New York ex rel. Cohn v. Graves*, 300 U.S. 308,313 (1937)). In *Katzenberg v. Comptroller*, 263 Md.189,205,282 A.2d 465 (1971) the court stated:

[T]here is a wide disparity between state and federal power in this area. The State's power to tax is a basic attribute of sovereignty... No similar power rested in the government of the United States,which is the reason why it was necessary to adopt the 16th Amendment to the Constitution in order to permit the passage of vaild federal income tax laws and why draftsmen have taken particular care not to extend the reach of the federal legislation before 1 March 1913. The state is subject to no such limitation.

(citations omitted). * Katzenberg therefore makes clear that the source of the Maryland's taxing power is not the Sixteenth Amendment.

*The Sixteenth Amendment was ratified on February 3,1913.

While their is no necessary tie between the federal income tax and Maryland's tax, the Maryland General Assembly exercised its discretion to adopt the federal adjusted gross income as the guide for calculating state tax. The Maryland income tax is "dependent"upon the federal income tax only as a guide for calculation,not as a source of taxing power. in fact, the nature of our federal government compels the conclusion that the people of the states are the source of the federal government's power to tax. The Supreme Court held over a century ago:

> The government of the Union, then...is, emphatically,and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them,and are to be exercised directly on them ,and for their benefit....
> That the power of taxation is one of vital importance; that it is retained by the states; that it is not abridged by the grant of a similar power to the governments; are truths which have never . denied....
> The people of all the states have created the general government, and have conferred upon it the general power of taxation.

M'Culloch v. Maryland,17 U.S. (4 Wheat.)316,405,424,435(1819).

In light of the foregoing,it is clear that the State ofMaryland may legally tax personal income, and plaintiffs having presented no meritorious reason for granting their motion for recconsideration,it shall be denied.

Accordingly, IT IS this28th day of December,1999,by this Court hereby ORDERED:

1. That plaintiffs' Motion for Reconsideration(Paper No.5),**IS DENIED;**

2. That the Clerk of the Court **MAIL** a copy of this this Order to **plaintiffs.**

J.F. MOTZ
UNITED STATES DISTRICT JUDGE

The 'sources'from which"gross income",as defined under section 61 must come from to be determined to arrive at "taxable income",are set forth in 26 CFR & 1.861-8(f)(1) are listed as follows:

(i) *Overall limitation to the foreign tax credit.*

(ii) [Reserved]

(iii) *DISC and FSC taxable income.*

(iv) *Effectively connected taxable income.***Nonresident alien individuals & foreign corporations engaged in trade or business within the United States,...**

(v) *Foreign base company income.*

(vi) *Other operative sections.*

(A) "...foreign source items of tax..."

(B) "...foreign mineral income..."

(C) [Reserved]

(D) "...foreign oil and gas extraction income..."

(E) "...**citizens** entitled to the benefits of section 931 & the section 936 tax credit..."

(F) "...residents of Puerto Rico..."

(G) "...income tax liability incurred to the Virgin Island..."

(H) "...income derived from Guam..."

(I) "...China Trade Act corporations..."

(J) "...income of a contrlled foreign corporation..."

(K) "...income from the insurance of U.S. risks..."

(L) "...international boycott factor...attributable taxes and income under section 999..."

(M) "...income attributable to the operation of an agreement vessel under section 607 of the Merchant Marine Act of 1936..."